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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,677	08/08/2006	Achim Kraus	022862-1093	9230
23409 7590 06/08/2010 MICHAEL BEST & FRIEDRICH LLP 100 E WISCONSIN AVENUE Suite 3300 MILWAUKEE, WI 53202				
EXAMINER				
GRAHAM, GARY K				
ART UNIT		PAPER NUMBER		
3727				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/588,677

Applicant(s)

KRAUS ET AL.

Examiner

Gary K. Graham

Art Unit

3727

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 7-10 and 14-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-10 and 14-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the oval cross section must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 8-10, 15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Matsuda (EP patent 1219513).

The patent to Matsuda discloses the invention as is claimed. Matsuda discloses a wiper device (figs.5,7) comprised of a wiper bearing (14, 15), a wiper shaft (104,105) positioned in a tube (not separately numbered but clearly shown) of the bearing, a wiper lever (102) on the shaft and a plate-like fastening element (14a,15a) embodied as one-piece with the bearing to fasten the bearing to a motor vehicle via a fastener (141,151). Predetermined breaking points (14c,15c) are provided on the bearing between a fastening point defined by the fastener and the tube. The breaking points are defined by a hole (14b,15b) in the bearing. Such hole appears as oval (fig.7) and thus defines a longitudinal axis in the plane of the plate-like fastening element as claimed.

With respect to claim 1 and setting forth that the tube is molded, such does not act to distinguish from Matsuda. Such relates to the method of making the tube. How the tube is made, at least with respect to molding, does not appear of particular relevance in the product claim 1.

With respect to claim 8, the particular manner of making the bearing does not act to distinguish from that which is suggested by Matsuda. How the bearing is made, at least with respect to diecast, does not appear of particular relevance in the product claim.

With respect to claim 15, the particular manner of making the bearing does not act to distinguish from that which is suggested by Matsuda. How the bearing is made, at least with respect to diecast, does not appear of particular relevance in the product claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 17-19, 21-23 and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsuda (EP patent 1219513)

The patent to Matsuda discloses all of the above recited subject matter, with the exception of there being multiple holes instead of a single hole and that the holes can be circular instead of ovular.

While Matsuda discloses a single ovular hole perpendicular to the plane of the fastening element, to employ multiple holes and merely change the shape thereof does not appear inventive. Such does not appear significant or anything more than one of numerous basic configurations a person of ordinary skill in the art would find obvious for the purpose of providing optimized breaking points in the fastening element given the teachings of Matsuda. Merely increasing the number of holes or changing the shape of such holes appears well within that which one of normal ordinary skill in the art would find obvious given the teaching of Matsuda, lacking some criticality of such. Such appears purely as a choice of design over the teachings of Matsuda. There appears no patentable significance to increasing the number of holes or changing their shape.

With respect to claim 25, the particular manner of making the bearing does not act to distinguish from that which is suggested by Matsuda. How the bearing is made, at least with respect to diecast, does not appear of particular relevance in the product claim.

Claims 7, 14, 20 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsuda (EP patent 1219513) in view of Zimmer (US patent application publication 2003/0077013).

Matsuda discloses all of the above recited subject matter with the exception of the wiper bearing being at least partially of plastics.

The publication to Zimmer discloses making wiper bearings (14) of plastics material by molding.

It is noted that making of components in the windshield wiper art of plastics is well known due to the lightweight and corrosion resistant properties of plastics. It would have been obvious to one of skill in the art to make the wiper bearing of Matsuda of plastics, as clearly suggested by Zimmer, to provide a lightweight, corrosion resistant and inexpensive wiper bearing.

Response to Arguments

Applicant's arguments filed 08 March 2010 have been fully considered but they are not persuasive.

Applicant's arguments with respect to the drawing objection are noted but not persuasive. Applicant essentially argues that since the claims could be directed to holes that are circular, and circular is shown, the claimed oval cross section does not have to be shown. Such is not persuasive. Note that the claims are directed to either circular or oval in the alternative. Thus, the claims could just as easily be directed to only oval holes. It appear such should be shown since the claims could be directed to only oval cross sectional holes.

Applicant's arguments with respect to the rejection of claims by Matsuda are noted but not persuasive. Applicant argues that Matsuda does not disclose the hole having a longitudinal axis in the plane of the fastening element. Such is not persuasive. As set forth above in the rejection, the elongated oval hole defines a longitudinal axis that lies in the plane of the fastening element.

Applicant's discussion of claim 17 with respect to Matsuda is noted but not persuasive. As set forth above, to modify Matsuda by providing multiple holes or merely changing the shape of such holes does not appear inventive. Such does not appear significant or anything more than one of basic numerous configurations a person of ordinary skill in the art would find obvious for the

purpose of providing breaking points in the fastening element given the teachings of Matsuda. Merely increasing the number of holes or changing the shape of such holes appears well within the purview of one of ordinary skill in the art given the teaching of Matsuda, lacking some criticality of such. It is noted that applicant discloses use of a single hole or multiple holes and that such can be circular or ovalar. It is further noted that no particular distinction or advantage of one over the other has been disclosed. Such appears therefore as a mere choice of design.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K. Graham whose telephone number is 571-272-1274. The examiner can normally be reached on Tuesday to Friday (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on 571-272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gary K Graham/
Primary Examiner, Art Unit 3727

GKG
06 June 2010